

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA

v.

Criminal Action No. 3:06-cr-00240–JAG

DANA J. CLAIBORNE,
Defendant.

OPINION

On June 23, 2016, the defendant filed a motion pursuant to 28 U.S.C. § 2255 (the “§ 2255 Motion”) challenging his designation as a career offender under §4B1.2 of the United States Sentencing Guidelines (the “Guidelines”). He based this challenge on the Supreme Court’s decision in *Johnson v. United States*, __ U.S. __, 135 S. Ct. 2551 (2015), which held the residual clause of the similarly-worded Armed Career Criminals Act (the “ACCA”) unconstitutionally vague.

On March 6, 2017, the Supreme Court held that, unlike the ACCA language considered in *Johnson*, the Guidelines are not subject to vagueness challenges. *Beckles v. United States*, __ U.S. __, 137 S. Ct. 886, 890 (2017). Thus, the vagueness holding in *Johnson* does not apply to the residual clause in §4B1.2 of the Guidelines. *United States v. Lee*, 855 F.3d 244, 246–47 (4th Cir. 2017). Consequently, regardless of any procedural or timeliness issues with the § 2255 Motion, it would fail on the merits. *Id.*

For these reasons, the Court GRANTS the government’s motion to dismiss the § 2255 Motion.

The Court will issue an appropriate order.

Let the Clerk send a copy of this Opinion to all counsel of record.

Date: August 4, 2017
Richmond, VA

<div style="display: flex; align-items: center; justify-content: center;"><div style="text-align: right; margin-right: 10px;">/s/</div><div style="font-size: 2em; margin-right: 10px;">JAG</div><div style="border-bottom: 1px solid black; width: 100%;"></div><div style="text-align: left;">John A. Gibney, Jr. United States District Judge</div></div>
